IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 200 OF 2004

Raghunath Laxman Nikam .... Petitioner

versus

The Commissioner of Revenue
Pune zone, Pune ... Respondents.

Shri U. Warunjikar for the petitioner.
Shri S.R.Nargolkar AGP for Respdts. 1 to 4.

CORAM; V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATED; 6TH JUNE, 2006.

P.C:

1. By this petition, the petitioner has challenged the order dated 17-4-2002 passed by the Divisional Commissioner, Pune Division, Pune. By this order the Commissioner dismissed the appeal of the petitioner, challenging the findings and punishment recorded by the enquiry officer in the disciplinary proceedings by observing that since the petitioner had chosen to go to civil court challenging his dismissal from service and the suit is dismissed and the dismissal of the suit is maintained in the appeal, no separate decision in the departmental enquiry is necessary.

2. Factually, civil suit filed by the petitioner

claiming setting aside the order of dismissal was rejected basically on the ground that the suit was not maintainable as the departmental appeal itself was pending. This finding of the trial court was confirmed in appeal by the appellate court. The net result is that the petitioner did not get any opportunity to challenge the correctness of the order of punishment either before civil court or before departmental authority. It is therefore obvious that the Commissioner committed an error in dismissing the appeal because of the decision in the civil suit. The impugned order therefore deserves to be set aside and is accordingly set aside. The matter is remitted back to the Divisional Commissioner of Pune for deciding the appeal on merit in accordance with the law as early as possible preferably in two months from the date of receipt of this order. Petition accordingly disposed of.

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